

**United States District Court, Northern District of Illinois**

Name of Assigned Judge or Magistrate Judge	Robert M. Dow, Jr.	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	08 C 58	DATE	3/30/2009
CASE TITLE	Franek vs. Walmart Stores, Inc. et al.		

**DOCKET ENTRY TEXT**

For the reasons stated below, Franek's motion [69] to amend the Court's March 13, 2009 order [68] pursuant to Fed. R. Civ. P. 59(e) is granted. Notice of motion date of 4/1/09 is stricken and no appearances are necessary on that date.

[ For further details see text below.]

Docketing to mail notices.

**STATEMENT**

Before the Court is Clemens Franek's ("Franek") motion to amend the Court's March 13, 2009 order pursuant to Fed. R. Civ. P. 59(e) [69]. By way of background, on January 3, 2008, Franek brought a three-count complaint against Walmart Stores, Inc. ("Walmart") and Target Corporation ("Target") alleging trademark infringement, false designation of origin, and deceptive trade practices. That case was assigned No. 08-cv-58. On March 3, 2008, Jay Franco & Sons, Inc. ("Franco") brought a five-count complaint against Franek seeking a declaration of non-infringement, invalidation of Franek's trademark, and other relief. The second case was assigned No. 08-cv-1313. On May 6, 2008, Franek asserted four counterclaims against Franco in Case No. 08-cv-1313 for trademark infringement, false designation of origin, deceptive trade practices, and fraud. The two lawsuits were consolidated before this Court.

Franco subsequently moved for partial summary judgment [41] on Count II of its complaint and on Counts I through IV of Franek's counterclaim. On March 13, 2009, the Court entered a memorandum opinion and order [68] granting Franco's motion. Franek now moves to amend the March 13 order to make clear that the order is final and appealable. In support of his motion, Franek states that although Franco's motion was for partial summary judgment, the Court's order finding that Franek's trademark is invalid "essentially renders all other pending counts moot." The Court has ascertained that Franco has no objection to the relief sought in Franek's motion.

Accordingly, Franek's motion [69] is granted and the Court clarifies that (i) the March 13, 2009 memorandum opinion and order is final and appealable, (ii) Counts I, III, IV, and V of Franco's complaint are dismissed without prejudice as moot, and (iii) Counts I, II, and III of Franek's complaint against Walmart and Target likewise are dismissed without prejudice as moot. A separate Rule 58 judgment order will be entered on the docket sheet. Finally, in light of the foregoing disposition, the notice of motion date of 4/1/09 is stricken and no appearances are necessary on that date.